



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[EPA-R04-OAR-2020-0461; FRL-8976-02-R4]

Air Plan Approval and Operating Permit Program; KY; Public, Affected State, and EPA Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving changes to the Kentucky State Implementation Plan (SIP) and the Kentucky Title V Operating Permit Program (Title V) submitted by the Commonwealth of Kentucky, through the Energy and Environment Cabinet (Cabinet) on August 12, 2020, and March 29, 2021. These revisions address the public notice rule provisions for the New Source Review (NSR), Federally Enforceable State Operating Permits (FESOP), and Title V programs of the Clean Air Act (CAA or Act) by providing for electronic notice (“e-notice”) and removing the mandatory requirement to provide public notice of a draft air permit in a newspaper. EPA is approving these changes as they are consistent with the Clean Air Act (CAA or Act) and implementing Federal regulations.

DATES: This rule is effective **[Insert date 30 days after date of publication in the FEDERAL REGISTER]**.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2020-0461. All documents in the docket are listed on the www.regulations.gov website. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available

either electronically through www.regulations.gov or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Sarah LaRocca, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-8994. Ms. LaRocca can also be reached via electronic mail at larocca.sarah@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

EPA is approving changes to 401 Kentucky Administrative Regulation (KAR) 52:100, *Public, affected state, and U.S. EPA review*, of the Kentucky SIP and Title V program, submitted by the Commonwealth on August 12, 2020, and March 29, 2021. The August 12, 2020, and March 29, 2021, SIP and Title V program revisions seek to establish a revised method of publication of public notices for public hearings and public comment periods, establish a revised method of notification of the opportunity to be placed on a mailing list of permit actions, change how documents related to permit proceedings will be available for public inspection, and make minor changes to 401 KAR 52:100 that do not alter the meaning of the regulation. The SIP revisions, which address public notice rule provisions for the NSR and FESOP programs, updates the current SIP-approved version of 401 KAR 52:100 (Version 1) to Version 2. The

Title V revision updates the approved version of 401 KAR 52:100 originally approved in the Kentucky Title V program to Version 2 as well.¹

II. Analysis of Kentucky's Submission

On October 5, 2016, EPA finalized revised public notice provisions for the NSR, Title V, and Outer Continental Shelf permitting programs of the CAA. *See* 81 FR 71613 (October 18, 2016). These rule revisions removed the mandatory requirement to provide public notice of permitting actions through publication in a newspaper and allow for internet e-notice as an option for permitting authorities implementing their own EPA-approved SIP rules and Title V rules, such as Kentucky's EPA-approved permitting programs. Permitting authorities are not required to adopt e-notice. Nothing in the revised rules prevents a permitting authority with an EPA-approved permitting program from continuing to use newspaper notification and/or from supplementing e-notice with newspaper notification and/or additional means of notification. For the noticing of draft permits issued by permitting authorities with EPA-approved programs, the rule requires the permitting authority to use "a consistent noticing method" for all permit notices under the specific permitting program. When e-notice is provided, EPA's rule requires electronic access (e-access) to the draft permit for the duration of the public comment period. A full description of the e-notice and e-access provisions are contained in EPA's October 18, 2016 rulemaking document. *See* 81 FR 71613.

The SIP and Title V permit programs are revised through changes to 401 KAR 52:100, *Public, affected state, and U.S. EPA review*, which establishes the procedures used by the Cabinet to provide for the review of federally-enforceable permits by the public, affected states, and EPA. Specifically, 401 KAR 52:100 applies to permit actions established in 401 KAR 52.020, *Title V Permits* and 401 KAR 52.030, *Federally-enforceable permits for non-major sources*. In addition, the public participation provisions of Kentucky's major source NSR permitting programs at 401 KAR 51:017, *Prevention of significant deterioration of air quality*

¹ EPA fully approved Kentucky's Title V permitting program in 2001. *See* 66 FR 54955 (October 31, 2001).

(PSD), and 401 KAR 51:052, *Review of new sources in or impacting upon nonattainment areas* (addressing nonattainment new source review (NNSR)) cross reference the public notice procedures of 401 KAR 52:100.

In a notice of proposed rulemaking (NPRM) published on May 28, 2021 (86 FR 28740), EPA proposed to approve Kentucky's SIP and Title V program revisions provided on August 12, 2020, and March 29, 2021. The NPRM provides additional detail regarding the background and rationale for EPA's action. Comments on the NPRM were due on or before June 28, 2021. EPA did not receive any comments on the NPRM.

III. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of 401 KAR 52:100, *Public, affected state, and U.S. EPA review*, Version 2, State effective June 2, 2020, into the Kentucky SIP. The incorporation includes minor textual changes and establishes a revised means of publication for public notices for public hearing, public comment periods, and the opportunity to join mailing lists, and a revised means to inspect documents related to permit proceedings. EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 4 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.²

IV. Final Action

² See 62 FR 27968 (May 22, 1997).

EPA is approving the changes to the 401 KAR 52:100 *Public, affected state, and U.S. EPA review*, of the Kentucky SIP and Title V program, as submitted on August 12, 2020, and March 29, 2021, as these changes are consistent with the CAA and implementing Federal regulations.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve SIP and Title V submissions that comply with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k) and 7661a(d); 40 CFR 52.02(a) and 70.4(e). Thus, in reviewing SIP and Title V submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The Kentucky SIP and Title V program are not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rules do not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will they impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of

judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects

40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: September 22, 2021.

John Blevins,
Acting Regional Administrator,
Region 4.

For the reasons stated in the preamble, the EPA amends 40 CFR parts 52 and 70 as follows:

PART 52 – APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart S – Kentucky

2. In §52.920(c), Table 1 is amended under “Chapter 52 Permits, Registrations, and Prohibitory Rules” by revising the entry for “401 KAR 52:100” to read as follows:

§ 52.920 Identification of plan.

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(c) * * *

Table 1—EPA-Approved Kentucky Regulations

State citation	Title/subject	State effective date	EPA approval date	Explanation
**	**	*	*	*
Chapter 52 Permits, Registrations, and Prohibitory Rules				
**	**	*	*	*
401 KAR 52:100	Public, affected state, and U.S. EPA review	6/2/2020	[Insert date of publication in FEDERAL REGISTER], [Insert citation of publication]	
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PART 70 – STATE OPERATING PERMIT PROGRAMS

3. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

4. Amend appendix A to part 70 by adding paragraph (c) under the heading “Kentucky” to read as follows:

Appendix A to Part 70 – Approval Status of State and Local Operating Permits Programs

* * * * *

Kentucky

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(c) Revisions to 401 Kentucky Administrative Regulation 52:100, submitted on March 29, 2021, with a State effective date of June 2, 2020, to allow for electronic noticing of operating permits, are approved on **[Insert date of publication in FEDERAL REGISTER]**.

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[FR Doc. 2021-21048 Filed: 9/30/2021 8:45 am; Publication Date: 10/1/2021]